

1 MALIK ALI MUHAMMAD, V-37398

2 PSP, CRC 402/27 LOW

FILED

3 P.O. Box 3535

08 JUN -5 PM 2:06

4 NORCO, CA. 92860

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

5

6 PETITIONER, PRO SE

7

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10

11

12 MALIK ALI MUHAMMAD, No. C 07-3627 MMC (PR)

13 PETITIONER,

14 OPPOSITION TO MOTION

15 VS TO DISMISS AND REQUEST

16 FOR EVIDENTIARY

17 DERRAL ADAMS, WARDEN, HEARING

18 RESPONDENT.

19

20

21 PETITIONER, MALIK ALI MUHAMMAD, HEREBY FILES AN

22 OPPOSITION TO RESPONDENT'S MOTION TO DISMISS PETITION

23 FOR WRIT OF HABEAS CORPUS AND REQUEST FOR EVIDENTIARY

24 HEARING FOR REASONS AS SET FORTH HEREIN.

25

26 STATEMENT OF THE CASE

27

28 PETITIONER AGREES WITH AND STIPULATES TO RESPONDENT'S

1 STATEMENT OF THE CASE SUBJECT TO THE FOLLOWING REVISIONS

2 AND/OR ADDITIONS:

3

4 1) AT ALL TIMES DURING THE COLLATERAL APPELLATE REVIEW  
5 OF THIS MATTER (I.E., STATE AND FEDERAL) THE  
6 PETITIONER HAS REPRESENTED HIMSELF, (IN PRO SE).

7

8 2) ON MAY 9, 2008, PETITIONER'S MOTION FOR APPOINTMENT  
9 OF COUNSEL WAS DULY DENIED BY THIS COURT.

10

11 3) AT ALL TIMES MENTIONED DURING THE COLLATERAL REVIEW  
12 OF THIS MATTER PETITIONER HAS BEEN INCARCERATED AND,  
13 AS A RESULT THEREOF, HAS BEEN SUBJECTED TO THE  
14 FOLLOWING LIMITATIONS AND/OR IMPEDIMENTS TO THE  
15 PROPER AND ADEQUATE LITIGATION OF THIS MATTER:

16

17 a) THE INABILITY TO TRAVEL TO THE VARIOUS COURTHOUSES  
18 TO INSURE THE PROPER AND TIMELY FILING OF THE  
19 NECESSARY AND REQUIRED DOCUMENTS;

20

21 b) THE INABILITY TO DEPOSIT DOCUMENTS INTO UNITED STATES  
22 POSTAL SERVICE RECEPTACLES OR PLACE SUCH DOCUMENTS  
23 INTO THE "ACTUAL" POSSESSION OF THE UNITED STATES POSTAL  
24 SERVICE;

25

26 c) THE INABILITY TO MAKE FOLLOW-UP TELEPHONE CALLS TO  
27 THE COURTHOUSE REGARDING THIS MATTER;

28

1 d) THE INABILITY TO PERSONALLY MONITOR IN-COMING AND  
 2 OUT-GOING MAIL PERTINENT TO THE PROPER DISPOSITION  
 3 OF THIS MATTER;

4  
 5 e) THE INABILITY TO SECURE THE REQUIRED NUMBER OF COPIES  
 6 OR DUPLICATES OF REQUIRED DOCUMENTS FROM PRISON  
 7 AUTHORITIES, (E.G., TEN (10) COPIES OF STATE SUPREME  
 8 COURT PETITION);

9  
 10 f) THE INABILITY TO LEAVE PRISON TO ASSIST WITH THE  
 11 PROPER DISPOSITION OF THIS MATTER FOR ANY REASON.

12  
 13 4) ON MAY 2, 2006, PETITIONER RECEIVED "ACTUAL" NOTICE OF  
 14 THE DENIAL OF HIS PETITION BY THE SUPERIOR COURT  
 15 OF THE COUNTY OF ALAMEDA.

16  
 17 5) ON JULY 11, 2006, PETITIONER RECEIVED "ACTUAL" NOTICE  
 18 OF THE DENIAL OF HIS PETITION BY THE CALIFORNIA  
 19 COURT OF APPEAL

20  
 21 6) ON APRIL 23, 2007, PETITIONER RECEIVED "ACTUAL" NOTICE  
 22 OF THE DENIAL OF HIS PETITION BY THE CALIFORNIA  
 23 SUPREME COURT.

24  
 25 7) ON OCTOBER 8, 2005, PETITIONER WAS ASSIGNED TO THE  
 26 PRISON JOB ASSIGNMENT OF "CLERK 501" WHEREIN HIS  
 27 MANDATORY WORK DAYS AND HOURS WERE MONDAY  
 28 THROUGH FRIDAY, 0730 HOURS - 1530 HOURS, RESPECTIVELY.

1 ARGUMENT

2 AND

3 POINTS AND AUTHORITIES

5 I

7 HABEAS CORPUS AND CIVIL RIGHTS ACTIONS ARE OF  
 8 FUNDAMENTAL IMPORTANCE IN OUR CONSTI-  
 9 TUTIONAL SCHEME BECAUSE THEY DIRECTLY  
 10 PROTECT OUR MOST VALUED RIGHTS.

12 IN A "HABEAS" ACTION WHEREIN STATE PRISONERS ALLEGED  
 13 THAT THE INADEQUACY OF THE PRISON LEGAL LIBRARY  
 14 FACILITIES OPERATED TO EFFECTIVELY DENY AND DEPRIVE THEM  
 15 OF REASONABLE ACCESS TO THE COURTS AND EQUAL PROTECTION  
 16 OF THE LAWS AS GUARANTEED BY THE FIRST AND FOURTEENTH  
 17 AMENDMENTS TO THE UNITED STATES CONSTITUTION, THE  
 18 UNITED STATES SUPREME COURT DISMISSED ALL DOUBTS RE-  
 19 GARDING ITS CONSIDERATION OF THE IMPORTANCE AND SIGNIFI-  
 20 OF THE RIGHT TO PETITION FOR WRITS OF HABEAS CORPUS.  
 21 SEE BOUNDS V SMITH (1977) 430 U.S. 817, 97 S. CT. 1491, CITING  
 22 JOHNSON V AVERY 393 U.S. 483 AT 485 AND WOLFE V McDONNELL,  
 23 418 U.S. 539.

24 IN THE PRESENT MATTER, PETITIONER HAS NOT ONLY BEEN  
 25 HINDERED BY THE LIMITATIONS AND/OR IMPEDIMENTS TO THE  
 26 ADEQUATE AND PROPER LITIGATION OF HIS PETITION AS DESCRIBED  
 27 AND SET FORTH WITHIN THE HERETOFORE STATEMENT OF THE  
 28 CASE, HIS PETITION SEEKS TO ADDRESS BASIC AND FUNDAMENTAL

1 CONSTITUTIONAL DEPRIVATIONS UPON WHICH HIS INCARCERATION  
2 IS PREDICATED.

4 II

6 A HABEAS PETITION SHOULD BE DISMISSED  
7 IF STATE REMEDIES HAVE NOT BEEN  
8 EXHAUSTED.

10 AS A GENERAL RULE, A HABEAS PETITION SHOULD BE  
11 DISMISSED IF STATE REMEDIES HAVE NOT BEEN EXHAUSTED  
12 AS TO ANY OF THE FEDERAL CLAIMS.

13 O'BREMSKI V MAASS (9TH CIR. 1990) 915 F.2 418, 420

14 AS IT IS APPARENT THAT IN THE PRESENT MATTER THE GIST  
15 OF PETITIONER'S CLAIMS REST UPON THE DEPRIVATION OF  
16 FUNDAMENTAL RIGHTS THAT ARE GUARANTEED BY THE  
17 UNITED STATES CONSTITUTION, THE REQUIREMENT TO "EXHAUST"  
18 SUCH ISSUES WITHIN THE STATE COURTS WAS OF PARAMOUNT  
19 IMPORTANCE. FURTHERMORE, SINCE PETITIONER WAS SUBJECTED  
20 TO THE RIGOROUS ENFORCEMENT OF THE "TOTAL EXHAUSTION"  
21 RULE, CASTILLE V PEOPLES (1989) 489 U.S. 346, 109 S. CT. 1056  
22 CITING ROSE V LUNDY (1981) 455 U.S. 509, 102 S. CT. 1198,  
23 IT WAS ESSENTIAL THAT PETITIONER CONTINUALLY SCRUTINIZE  
24 THE LEGAL THEORIES UNDERLYING HIS CLAIM(S) FOR RELIEF  
25 AS THEY RELATED TO THE RESPONSES, (I.E. DECISIONS),  
26 RENDERED BY THE STATE COURTS. NOTWITHSTANDING, IT MUST  
27 BE NOTED THAT THE ENTIRE "EXHAUSTION" PROCESS WAS ACCOM-  
28 PLISHED WITHIN A PERIOD OF LESS THAN SIX (6) MONTHS.

III

FOR PURPOSES OF 28 U.S.C. § 2244(d) THE  
TIME MUST BE TOLLED FOR THE ENTIRE PERIOD  
IN WHICH A PETITIONER IS APPROPRIATELY  
Pursuing AND EXHAUSTING HIS STATE REMEDIES.

THE ANTI TERRORISM AND EFFECTIVE DEATH PENALTY ACT,  
(AEDPA), ALLOWS FOR TOLLING DURING THE PENDENCY OF A  
"PROPERLY FILED APPLICATION FOR STATE POST-CONVICTION OR  
OTHER COLLATERAL REVIEW WITH RESPECT TO THE PERTINENT  
JUDGEMENT OR CLAIM." THIS TOLLING PERIOD INCLUDES  
"ALL OF THE TIME DURING WHICH A STATE PRISONER IS  
ATTEMPTING THROUGH USE OF STATE COURT PROCEDURES, TO  
EXHAUST STATE COURT REMEDIES WITH REGARD TO A PARTI-  
CULAR POST CONVICTION APPLICATION." (EMPHASIS ADDED)  
NINO V GALAZA, (9TH CIR 1999), 183 F.3 1003, 1006.

IN OTHER WORDS, "THE STATUTE OF LIMITATIONS IS TOLLED  
FROM THE TIME THE FIRST STATE HABEAS PETITION IS FILED  
UNTIL THE CALIFORNIA SUPREME COURT REJECTS THE PETITIONER'S  
FINAL" COLLATERAL APPEAL (EMPHASIS ADDED)  
CAREY V SAFFOLD, (9TH CIR 2002) 536 U.S. 214, 223

IN THE PRESENT MATTER, RESPONDENT CONCEDES THAT  
PETITIONER'S WRIT FOR HABEAS CORPUS RELIEF WAS  
"PROPERLY FILED" AT ALL STAGES OF THE STATE APPELLATE  
REVIEW OTHER THAN DURING THE INTERVAL BETWEEN HIS  
STATE COURT OF APPEAL REJECTION AND THE FILING OF SAME  
IN THE CALIFORNIA STATE SUPREME COURT. IN THAT REGARDS



1 RESPONDENT CONTENDS THAT DUE TO AN "UNREASONABLE DELAY"  
 2 IN THE FILING OF PETITIONER'S STATE SUPREME COURT  
 3 PETITION, PETITIONER'S STATE SUPREME COURT PETITION  
 4 WAS NOT "PROPERLY FILED." (RESPONDENT'S MOTION TO  
 5 DISMISS, PAGE 3, LINES 17 THROUGH 23)  
 6 PRIOR TO ADDRESSING RESPONDENT'S PRIMARY CON-  
 7 TENTION, PETITIONER SUBMITS THE FOLLOWING:  
 8 IN REFERENCE TO THE REQUIREMENT THAT A PETITION IS  
 9 "PROPERLY FILED," THE COURTS HAVE CONSISTENTLY HELD THAT  
 10 THE TIME DURING WHICH A PROPERLY FILED APPLICATION  
 11 FOR STATE POST-CONVICTION OR OTHER COLLATERAL REVIEW  
 12 WITH RESPECT TO THE PERTINENT JUDGMENT OR CLAIM IS  
 13 PENDING SHALL NOT BE COUNTED TOWARD ANY PERIOD OF  
 14 LIMITATION UNDER 28 U.S.C. § 2244(d) (2);  
 15 NINO V GALAZA (4TH CIR. 1999) 183 F.3d 1003, 1006;  
 16 ARTUZ V BENNETT 531 U.S. 4, 121 S.Ct. 361;  
 17 LOOKINGBILL V JOHNSON (2000) 242 F. Supp. 2d. 424  
 18 SMITH V DUNCAN (9TH CIR. 2001) 274 F.3d. 1245  
 19 CAREY V SAFFOLD (9TH CIR. 2002) 536 U.S. 214  
 20 GILSON V BAZZLE (2005) 383 F. Supp. 2d. B70  
 21 FURTHERMORE, IN REFERENCE TO THE FEDERAL RULES OF  
 22 PROCEDURE, THE UNITED STATES SUPREME COURT HAS HELD  
 23 THAT THE FEDERAL RULES OF CRIMINAL PROCEDURE ARE NOT,  
 24 AND WERE NOT INTENDED TO BE A RIGID CODE TO HAVE AN  
 25 INFLEXIBLE MEANING IN RESPECTIVE OF THE CIRCUMSTANCES.  
 26 FALLEN V UNITED STATES (1964) 378 U.S. 139.  
 27 ADDITIONALLY, IT MUST BE NOTED THAT IN THE PRESENT  
 28 MATTER, PETITIONER HAS SET FORTH FACTS WITHIN HIS

1 PETITION THAT, WHEN DULY PROVEN, WILL CONFIRM THAT HE  
 2 HAS BEEN UNCONSTITUTIONALLY DEPRIVED OF THE BASIC AND  
 3 FUNDAMENTAL RIGHTS TO A FAIR AND IMPARTIAL TRIAL  
 4 AND AS A RESULT THEREOF HAS BEEN IMPRISONED WITHOUT  
 5 DUE PROCESS AND THE EQUAL PROTECTION OF THE LAWS.  
 6 IN THE ROBBINS (1998) 18 C.4TH 770  
 7 IN THE INSTANT MATTER RESPONDENT WOULD APPEAL TO  
 8 PLACE HEAVY EMPHASIS AND RELIANCE UPON THE DECISION  
 9 OF THE COURT AS RENDERED WITHIN THE DECISION OF  
 10 EVANS V CHAVIS (2006) 346 U.S. 189 WHEREIN THE COURT  
 11 HELD THAT IN THE ABSENCE OF A "CLEAR" RULING FROM THE  
 12 STATE COURT REGARDING THE ISSUE OF "TIMELINESS", A  
 13 FEDERAL COURT MUST DECIDE FOR ITSELF WHETHER A STATE  
 14 HABEAS PETITION IN CALIFORNIA WAS FILED "WITHIN WHAT  
 15 CALIFORNIA WOULD CONSIDER A 'REASONABLE TIME.'"  
 16 RESPONDENT FURTHER NOTES THAT "60 DAYS" IS THE LONGEST  
 17 AMOUNT OF TIME MOST STATES ALLOW FOR A CLAIM TO BE  
 18 PRESENTED TO A HIGHER COURT AND THAT A SIX MONTH  
 19 DELAY HAS BEEN DETERMINED TO BE UNREASONABLE  
 20 UNDER CALIFORNIA LAWS. RESPONDENT THEREFORE CONTENDS  
 21 THAT THE 117 DAY INTERVAL BETWEEN THE DENIAL OF  
 22 PETITIONER'S WRIT AND THE FILING OF SAME IN THE STATE  
 23 SUPREME COURT IS "FAR MORE THAN THE 60 DAYS CON-  
 24 SIDERED REASONABLE BY MOST STATES."  
 25 IN ADDRESSING THE AFORESTATED ASSERTIONS BY RESPON-  
 26 DENT, PETITIONER WOULD FIRST DIRECT THE COURT'S ATTENTION  
 27 TO THE "ACTUAL" DATE OF THE RECEIPT (NOTICE) OF THE  
 28 STATE COURT OF APPEAL DECISION (A.R. JULY 11, 2006)



1 WHICH WOULD DECREASE THE INTERVAL AT ISSUE BY 19 DAYS.  
2 SECONDLY, THE PETITIONER WOULD MAINTAIN THAT MATERIAL  
3 DISTINCTIONS ARE PRESENT THAT WOULD DIFFERENTIATE THE  
4 EVANS MATTER FROM THE PETITION OF PETITIONER, E.G.,  
5 IN THE FORMER THERE WAS AN INTERVAL IN EXCESS OF  
6 3 YEARS BETWEEN THE DENIAL OF THE PETITION BY THE  
7 STATE COURT OF APPEAL AND THE FILING OF THE PETITION  
8 IN THE STATE SUPREME COURT; THE DECISION OF THE HIGH  
9 COURT WAS DIRECTED TOWARD THE FILING OF A SECOND  
10 ROUND OF STATE COURT PETITIONS; THE "EQUITABLE TOLLING"  
11 THEORY OF THE PETITIONER WAS FOUND TO BE SOMEWHAT  
12 LESS THAN CREDIBLE.  
13 FURTHERMORE, WHEN ONE CONSIDERS THE THrust AND  
14 UNDERLYING RATIONALE OF THE EVANS CASE AS SET FORTH  
15 WITHIN THE CONCURRING OPINION RENDERED BY THE  
16 HONORABLE JUSTICE STEVENS, IT BECOMES APPARENT  
17 THAT THE RULING WAS NOT DESIGNED TO THWART THE  
18 FILING OF A PETITION SUCH THE ONE UNDER PRESENT  
19 CONSIDERATION.  
20 IN THAT REGARDS, JUSTICE STEVENS CONCLUDED THAT THE  
21 HIGH COURT SHOULD ADOPT THE PRESUMPTION THAT IF THE  
22 STATE COURT HAS ISSUED AN "UNEXPLAINED" ORDER  
23 DENYING A PETITION AND THERE HAS BEEN A DELAY  
24 OF LESS THAN SIX (6) MONTHS BETWEEN FILINGS, THE  
25 STATE COURT HAS CONCLUDED THAT THE PETITION WAS  
26 FILED IN A TIMELY MANNER.  
27 IN THE PRESENT MATTER IT MAY BE NOTED THAT THE  
28 STATE SUPREME COURT CITED AS A BASIS FOR ITS DENIAL,

1 THE DECISION OF IN RE DIXON (1953) 41 C2 756, 42 W.2d, 43  
 2 PETITIONER IS NOT ENTITLED TO RELIEF ON THE BASIS OF  
 3 HIS VERSION OF CONFLICTING EVIDENCE WHICH COULD  
 4 HAVE BEEN, BUT WAS NOT, RAISED ON DIRECT APPEAL,  
 5 I.E., IN ESSENCE A "PROCEDURAL FLAW" IN THE FILING  
 6 OF HIS PETITION. THEREFORE, IT IS REASONABLE TO  
 7 EXTRAPOLATE THAT THE STATE SUPREME COURT EXAMINED  
 8 AND CONSIDERED THE IMPACT, (IF ANY), OF ALL POTENTIAL  
 9 PROCEDURAL DEFICIENCIES IN REGARDS TO THE FILING  
 10 AND SUBSTANTIVE CONTENT OF PETITIONER'S HABEAS  
 11 WRIT, INCLUDING THE ISSUE OF "TIMELINESS", AND AS  
 12 A RESULT OF SUCH EXAMINATION MADE THE DETERMI-  
 13 NATION THAT THE PETITION WAS IN FACT FILED IN A  
 14 TIMELY MANNER.  
 15 RESPONDENT ALSO CITES THE MATTER OF  
 16 CULVER V DIRECTOR OF CORRECTIONS 450 F. SUPP. 2d 1135  
 17 AS PROVIDING AN UNDERLYING RATIONALE TO REJECT  
 18 THE PETITION AT ISSUE, HOWEVER, IT WOULD APPEAR AS  
 19 THOUGH THE CIRCUMSTANCES SURROUNDING THE FORMER  
 20 PETITION ARE INAPPROPRIATE TO THE EXTENT THAT THE DISTINC-  
 21 TIONS WARRANT MINIMUM CONSIDERATION, I.E.,  
 22 1) THE PETITIONER WAS REPRESENTED BY COUNSEL, I.E. HE  
 23 UNBURDENED BY THE RESTRICTIONS OF AN INCARCERATED  
 24 PETITIONER;  
 25 2) THE FAILURE OF THE PETITIONER TO "EXHAUST" ALL CLAIMS,  
 26 3) STATE SUPREME COURT PETITION DENIED WITHOUT  
 27 COMMENT;  
 28 4) "OVERLAPPING" PETITIONS FILED,

1 5) AN ELAPSED OF A PERIOD IN EXCESS OF ONE (1) YEAR  
 2 BETWEEN THE DATE OF DENIAL OF THE STATE SUPREME  
 3 COURT DECISION (JANUARY 25, 2005) AND THE FILING  
 4 OF THE PETITION AT THE FEDERAL LEVEL (FEB. 16, 2006)  
 5 6) ORIGINAL STATE SUPREME COURT PETITION DENIED  
 6 WITHOUT COMMENT (AUGUST 17, 2005).  
 7 7) PETITIONER DID NOT FILE AN OPPOSITION TO THE  
 8 RESPONDENT'S MOTION TO DISMISS PETITION FOR  
 9 LACK OF TIMELINESS, HENCE THE MOTION WAS  
 10 "UNCONTESTED."  
 11 FINALLY, IT MAY BE NOTED THAT RESPONDENT HAS  
 12 "CONVENIENTLY" NEGLECTED TO ARTICULATE AND SET  
 13 FORTH REASONS HEREIN TO ARTICULATE A PLAUSIBLE  
 14 JUSTIFICATION TO DIFFERENTIATE THE APPLICABILITY  
 15 OF THE DECISION AS RENDERED BY THE HIGH COURT IN  
 16 THE MATTER OF CAREY V SAFFOLD (2002) 536 U.S. 214  
 17 TO THE PRESENT MATTER, (I.E., THE DETERMINATION  
 18 THAT A DELAY IN EXCESS OF 4 1/2 MONTHS DID NOT BAR  
 19 THE RESOLUTION OF THE ISSUES), REAFFIRMED BY THE  
 20 DECISION AS RENDERED BY GATSON V PALMER (9TH CIR. 2005)  
 21 417 F.3d 1030.

#### IV

25 A COURT MAY APPLY THE DOCTRINE OF  
 26 EQUITABLE TOLLING AS A MATTER OF  
 27 FAIRNESS WHERE A PETITIONER HAS  
 28 BEEN IN SOME EXTRAORDINARY WAY  
 FROM EXERCISING HIS RIGHTS.

1 IT IS A WELL SETTLED LEGAL PRINCIPLE THAT A COURT MAY  
 2 APPLY THE DOCTRINE OF "EQUITABLE TOLLING" TO EXTEND THE  
 3 STATUTE OF LIMITATIONS BEYOND THE TIME OF ITS EXPIRA-  
 4 TION AS NECESSARY TO AVOID INEQUITABLE CIRCUMSTANCES.  
 5 JOHNSON V NYACK HOSPITAL (2ND CIR. 1996) 86 F.3d;  
 6 WHALEM/HUNT V EARLY (2000) 232 F.3d 1146  
 7 RYAN V LAMPERT (2001) 465 F.3d 964  
 8 GRAYSON V GRAYSON (2002) 185 F. Supp. 2d 747  
 9 LOFT V MUELLER (2002) 304 F.3d 918  
 10 IN DETERMINING THE APPLICABILITY OF THE DOCTRINE  
 11 OF "EQUITABLE TOLLING," TWO INQUIRIES MUST BE MADE,  
 12 N.R., (1) ARE THERE EXISTING "EXTRAORDINARY CIRCUMSTANCES"  
 13 THAT MATERIALLY CONTRIBUTE TO THE DELAY AND (2)  
 14 DID THE PARTY ASSERTING THE APPLICATION OF THE  
 15 DOCTRINE EXERCISE "DUE DILIGENCE?" IN APPLYING  
 16 THE AFORESAID INQUIRIES TO THE PRESENT MATTER,  
 17 PETITIONER DECLARES AS FOLLOWS:  
 18 1) PETITIONER HAS REPRESENTED HIMSELF (PRO SE) AT  
 19 ALL STAGES OF THIS MATTER;  
 20 2) DURING ALL STAGES OF THIS MATTER PETITIONER HAS  
 21 BEEN A CDOR PRISONER AND AS A RESULT THEREOF,  
 22 INCARCERATED;  
 23 3) ON OCTOBER 8, 2005, PETITIONER WAS ASSIGNED TO  
 24 THE PRISON JOB ASSIGNMENT OF CUECC.501 (CHAPLAIN  
 25 CLERK) WITH WORK HOURS OF 0830-1530, MONDAY  
 26 THROUGH FRIDAY, A POSITION HE HELD UNTIL FEB. 1, 2008.  
 27 4) PETITIONER WAS THE SOLE INMATE ASSIGNED TO SUCH  
 28 POSITION DURING THE PERIOD AS SET FORTH WITHIN #3.

1 5. THE DUTIES OF PETITIONER ENTAILED THE ARRANGEMENT,  
 2 SCHEDULING AND COORDINATION OF THE RELIGIOUS  
 3 MEETINGS AND EVENTS FOR MORE THAN 1100 INMATES  
 4 AND EIGHT (8) RELIGIOUS FAITHS.  
 5 6) PETITIONER WAS RESPONSIBLE FOR THE PERFORMANCE OF  
 6 DUTIES FOR FIVE (5) PRISON CHAPLAIN SUPERVISORS.  
 7 7) THE JOB ASSIGNMENT HOURS OF PETITIONER DIRECTLY  
 8 CONFLICTED WITH THE ACCESSIBLE HOURS TO THE  
 9 PRISON LEGAL LIBRARY.  
 10 8) PRISONERS WHO ARE ABSENT FROM THEIR JOB  
 11 ASSIGNMENTS ARE SUBJECT TO DISCIPLINARY  
 12 REPRISALS.  
 13 9) THE CSP, CORCORAN ADHERES TO AN AD HOC POLICY  
 14 OF LIMITING THE NUMBER OF COPIES THAT PRISONERS  
 15 MAY OBTAIN TO A NUMBER FAR LESS THAN THE  
 16 TEN (10) COPIES FOR THE FILING OF A HABEAS PETITION  
 17 IN THE STATE SUPREME COURT (CRC, RULE 44(b)).  
 18 10) AS A RESULT OF THE PRISON POLICY AS SET FORTH  
 19 WITHIN #9, PETITIONER WAS COMPELLED TO SEEK  
 20 AND OBTAIN THE ASSISTANCE OF SOURCES OUTSIDE  
 21 OF THE PRISON TO COMPLY WITH THE APPLICABLE  
 22 CALIFORNIA RULES OF COURT.  
 23 DESPITE THE AFORESAID IMPEDIMENTS, PETITIONER  
 24 ACCOMPLISHED THE FILING OF THE STATE SUPREME  
 25 COURT PETITION OF THIS MATTER WITHIN 96 DAYS FROM  
 26 THE TIME OF HIS RECEIPT OF NOTICE OF THE DENIAL OF  
 27 SAME BY THE STATE COURT OF APPEAL. IT WOULD THERE-  
 28 FORE APPEAR AS THOUGH BOTH REQUIREMENTS, (I.E.,



1 "EXTRAORDINARY CIRCUMSTANCES" AND "DUE DILIGENCE")  
 2 HAVE BEEN DEMONSTRATED IN THIS MATTER JUSTLY MAKING  
 3 THE DOCTRINE OF "EQUITABLE TOLLING" JUSTLY APPLICABLE.  
 4 FINALLY, IN THE EVENT THAT RESPONDENT CONTESTS OR  
 5 DISPUTES THE VALIDITY OF THE DECLARATIONS AS SET  
 6 FORTH HEREIN SUPPORTING PETITIONER'S ALLEGATION  
 7 REGARDING THE APPLICABILITY OF THE DOCTRINE OF  
 8 "EQUITABLE TOLLING" TO THE "TIMELINESS" ISSUE OF  
 9 THE FILING OF THIS PETITION, PETITIONER HEREBY  
 10 REQUEST AN EVIDENTIARY HEARING TO ASSIST THE COURT  
 11 IN THE MAKING OF SUCH A DETERMINATION.  
 12 ROY V LAMBERT (2001) F3d. 964.

#### 14 CONCLUSION

16 PETITIONER RESPECTFULLY REQUEST THAT RESPONDENT'S  
 17 MOTION TO DISMISS THE PETITION FOR WRIT OF HABEAS  
 18 CORPUS BE DENIED FOR THE REASONS AS SET FORTH HEREIN.

20 DATED: JUNE 2, 2008

22 RESPECTFULLY SUBMITTED,

24 Malik Ali Muhammad  
 25 MALIK ALI MUHAMMAD

PETITIONER EXHIBIT A

STATE OF CALIFORNIA

CSP-CORCORAN

NAME: Muhammad CDC#: V-37398 HOUSING: 151 L

On (date) 5/2/06, the above named Inmate received LEGAL/CONFIDENTIAL mail sent from Clerk of the Superior Court Alameda County Court House 1225 Fallon Street  
This receipt of Legal/Confidential will be maintained in the CSP-Corcoran mailroom as proof of receipt. Oakland, CA 94612-4200

ISSUING OFFICER:

Signature: E. Alcantar  
(print name): Alcantar  
Date Issued: 5/2/06

INMATE SIGNATURE:

Muhammad

PROOF OF SERVICE BY MAIL

(C.C.P. SEC. 1013 (a) & 2015.5; 28 U.S.C. SEC. 1746)

I MALIK ALI MUHAMMAD AM A RESIDENT OF NORCO,  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, I AM OVER THE AGE OF  
EIGHTEEN (18) YEARS OF AGE AND AM / A PARTY OF THE ABOVE INTITLED  
ACTION. MY MAILING ADDRESS IS CRC 402/27 LOW  
P.O. BOX 3535  
NORCO, CA. 92860

ON JUNE 2, 2008 SERVED THE FOREGOING.

OPPOSITION TO MOTION TO DISMISS AND REQUEST FOR EVIDENTIARY HEARING

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY(S) THEREOF, ENCLOSED IN A  
SEALED ENVELOPE(S), WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES  
MAIL, IN A DEPOSIT BOX SO PROVIDED AT ESP, NORCO, CA. (CRC)

DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
455 GOLDEN GATE AVENUE, SUITE 11000  
SAN FRANCISCO, CA. 94102-3664

ATTN: MS. MICHELLE J. SWANSON  
DEPUTY ATTORNEY GENERAL

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED,  
AND THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING  
AND THE PLACE SO ADDRESSED, I DECLARE UNDER PENALTY OF PERJURY THAT THE  
FOREGOING IS TRUE AND CORRECT.

DATE: JUNE 2, 2008.

Malik A. Muhammad  
(DECLARANT)

SANTA ANA CA 927 JUN



RECEIVED

JUN 5 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MMC

MAIL GENERATED FROM  
CA REHAB CENTER  
CR STATE PRISON



OFFICE OF THE CLERK, U.S. DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

450 GOLDEN GATE AVENUE

SAN FRANCISCO, CALIFORNIA 94102